

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANIEL J. DOBER,

Petitioner,

vs.

TODD WASMER, Warden of the
Tecumseh State Correctional Institution;

Respondent.

8:19CV514

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Motion for Reconsideration under Rule 60. ([Filing No. 9.](#)) The court determined Petitioner's habeas petition was a second or successive petition for habeas relief and dismissed the petition on May 18, 2020 without prejudice to reassertion upon certification by the Eighth Circuit Court of Appeals. (Filing Nos. [7](#) & [8.](#)) Petitioner now asks the court to vacate its ruling and address his claim regarding "the unlawful procurement and use of cell phone data by the State pursuant to the ruling of the U.S. Supreme Court in *Carpenter*" because that claim "does not fall within the meaning of a second application for habeas relief." ([Filing No. 9.](#))

Even if Petitioner could show that his claim regarding the cell phone data "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," 28 U.S.C. § 2244(b)(2)(A), Petitioner must still "move in the appropriate court of appeals for an order authorizing the district court to consider the [second or successive] application." 28 U.S.C. § 2244(b)(3)(A). Accordingly,

IT IS ORDERED that: Petitioner's Motion for Reconsideration under Rule 60 ([filing no. 9](#)) is denied.

Dated this 8th day of June, 2020.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive, flowing style.

Richard G. Kopf
Senior United States District Judge